

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

v.

FRED MEYER STORES, INC., a  
Delaware corporation; and JAIME SAN  
MIGUEL,

Defendants.

Case No. 1J-04-008-CV (RRB)

**[PROPOSED] ORDER RE JURY INSTRUCTIONS**

The Court held a pretrial conference with counsel for plaintiff and defendants on March 6, 2008. This followed the order by the Alaska Supreme Court declining to answer the certified question relating to this Court's order of October 5, 2007, dismissing plaintiff's breach of the implied covenant of good faith and fair dealing under a tort theory.

At the pretrial conference on March 6, 2008, the parties still suggested differing views as to the legal elements of the remaining claim of breach of the implied covenant of good faith and fair dealing on a contract analysis theory. Thereafter, defendants filed two motions. The first motion was to dismiss Jaime San Miguel as an individual defendant, and that motion is addressed in a separate

order granting the motion. The second motion by defendant Fred Meyer was for an order declaring that its proposed jury instructions on the implied covenant of good faith and fair dealing, both as to liability and damages, Defendant's Nos. 9, 10, 11, and 12, would be submitted to the jury as the law in this case.

Plaintiff did not directly respond to defendant's motion regarding proposed jury instructions. Instead, plaintiff elected to move to strike defendant's motion on the jury instructions as untimely. The Court disagrees that defendant's motion regarding the jury instructions was untimely or inappropriate and plaintiff's motion to strike is hereby denied.

With regard to the merits of defendant Fred Meyer's motion on the jury instructions, defendant has set forth an analysis of Alaska case law and jury instructions which address liability elements and proof, and potential damages if the jury finds in favor of plaintiff. As plaintiff has not refuted or argued against defendant's proposed jury instructions Nos. 9, 10, 11, and 12 as submitted, and as defendant has provided legal support for those instructions, the Court hereby Orders that those instructions will be given to the jury at the time of trial.

Accordingly, it is hereby ORDERED that Defendant's Proposed Jury Instructions Nos. 9, 10, 11, and 12 regarding the issue of plaintiff's employment status, the elements to be proven for a breach of the implied covenant of good faith and fair dealing on a contract basis, and the damages instruction will be submitted to the jury as set forth therein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Ralph R. Beistline  
United States District Judge